IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the Case

(1)-Writ petition No. 7213(S/S)2001

Bharat Singh Rana S/o Sri R.S. Rana,
R/o-C/o R.K.S. Rana, Rana Bhawan,
Nursery Road, Sri Nagar, Garhwal. ------Petitioner

Vs.

1. Vice Chancellor, H.N.B. Garhwal University,
   Sri Nagar, Garhwal.
2. Registrar, H.N.B. Garhwal University
   Sri Nagar, Garhwal.

----- Respondents

AND

(2)-Writ Petition No. 7216(S/S)2001

Rajendra Singh Kaintura
S/o Raghunath Singh Kaintura,
R/o Kamleshwar Bhawan,
Sri Nagar, Garhwal. -------- Petitioner

Vs.

1. Vice Chancellor, H.N.B. Garhwal University,
2. Registrar, H.N.B. Garhwal University,
   Sri Nagar, Garhwal,
3. Smt. Roshini Chauhan R/o Computer Operator,
   Computer Centre, H.N.B. Garhwal University,
   Sri Nagar, Garhwal.

--------- Respondents.

Approved for reporting

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Not approved for reporting

Date of Decision: October 12, 2007

Initial of Judge

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Reserved

(1)-Writ petition No. 7213(S/S)2001

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----- Respondents.

Sri S.N.Babulkar, Sr. Adv. Assisted by Sri Ravi Babulkar, learned counsel for the petitioner.
Sri Vinod Nautiyal, learned counsel for the University/respondents.

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   Computer Centre, H.N.B. Garhwal University,
   Sri Nagar, Garhwal.

--------- Respondents.

Sri S.N.Babulkar, Sr. Adv. Assisted by Sri Ravi Babulkar, learned counsel for the petitioner.
Sri Vinod Nautiyal, learned counsel for the University/respondents.
None for respondent no.3.

Hon'ble M.M. Ghildiyal, J.

Since the controversy raised by means of these writ petitions is almost common in nature, therefore for the sake of convenience, both these writ petitions have been consolidated and are being decided by a common judgment.

The petitioner Bharat Singh Rana in writ petition no. 7213 (S/S) of 2001 has challenged the orders dated 10.07.2001 and 08.11.2001 passed by the Registrar, H.N.B. Garhwal University Sri Nagar, Garhwal whereby petitioner's appointment on the post of Cataloguer has been cancelled. It is submitted by the petitioner Bharat Singh Rana that vide order dated 08.12.2000, the petitioner was appointed as part time Lecturer in Library and Information Science Department in Tehri Campus of the University. In pursuance of the advertisement dated 19.06.2000, the petitioner having requisite qualification in this credit, has applied for the post of Cataloguer. The petitioner is Graduate (B.Sc.-Bio Group) with Bachelor of Library and Information Science and he belongs to Schedule Tribe Candidates. After facing due procedure of selection, the petitioner was appointed on the post of Cataloguer vide order dated 08.06.2001 passed by the order of Vice Chancellor and communicated by the Joint Registrar (Admin.) and in pursuance of this order, the petitioner joined his duties on the post of Cataloguer. In spite of functioning regularly on the post, the respondents did not pay his salary.

The petitioner Rajendra Singh Kaintura in Writ Petition No. 7216 (S/S) of 2001 has assailed the orders dated 10.07.2001 and 08.11.2001 passed by the Registrar, H.N.B. Garhwal University whereby the petitioner's promotion on the post of Computer Operator has been cancelled. It is submitted by the petitioner Rajendra Singh Kaintura that initially he was appointed as Key Punch Operator in Computer Centre of the University and this appointment was on ad-hoc basis. The petitioner's service were absorbed w.e.f. 01.10.1997, thereafter he was temporarily promoted on the post of Data Entry Operator. Since the petitioner was entitled to be promoted on the post of Computer Operator, as the other

similarly situated Key Punch Operator had been given promotion, but he accepted temporarily promotion on the post of Data Entry Operator. In this regard the petitioner made representation requesting the Authorities to adopt uniform policy and ultimately vide order dated 22.06.2001 passed by Vice Chancellor and issued by the Assistant Registrar (Admin.), the petitioner was promoted to the post of Computer Operator.

The petitioner are constrained to file theses writ petitions against the impugned order dated 10.07.2001 by which services and promotion of as many as 6 Class III and Class IV employees have been either terminated or cancelled on the ground that the appointment/ promotions have been made without brining the same to the knowledge of Registrar.

The petitioner Bharat Singh Rana in writ petition no. 7213 (S/S) of 2001 has submitted that having aggrieved by the cancellation/termination order dated 10.07.2001, the petitioner made representation to the Registrar, but instead of reviewing the same, the Registrar without giving any opportunity to the petitioner vide order dated 08.11.2001 has reaffirmed his earlier order dated 10.07.2001, whereby petitioner's appointment on the post of Cataloguer was cancelled. Similarly, the petitioner Rajendra Singh Kaintura in writ petition no. 7216 (S/S) of 2001 has submitted that having aggrieved by the cancellation/termination order dated 10.07.2001, the petitioner made representation requesting the Registrar that some of the similarly situated candidates whose promotion/appointment was made in the similar circumstances and following the same procedure they are still continuing, but instead of reviewing the order dated 10.07.2001, the Registrar has reaffirmed his earlier order dated 10.07.2001 on the ground that the petitioner's promotion dated 22.06.2001 was not in accordance with Rules.

Heard Sri S.N. Babulkar, learned Senior Counsel assisted by Sri Ravi Babulkar, learned counsel for the petitioner and Sri Vinod Nautiyal, learned counsel for the University/respondents. None is present on behalf of respondent no.3.

This Court on 20.12.2001 in both the matters has passed order to the effect that in the meantime, the petitioners shall be paid salary of the period for which they have worked.

The respondents in Writ Petition No. 7213 (S/S) of 2001 have failed their counter affidavit in which they have stated that Sri Bharat Singh Rana was working in the Tehri Campus of the University as part time Lecturer on fix pay basis. He was recommended by the then Deputy Registrar for the purpose of promotion and the said recommendation was made directly to the Vice Chancellor. Under the statutes, it is the Registrar who is the competent authority to make such appointment. This post was under the category of reservation for Scheduled Castes candidates. This post was also not subject to promotion but could only be filled by direct appointment. Without considering the case of other who belongs to Scheduled Caste category, the petitioner was promoted on the said post illegally under the order of Vice Chancellor on the recommendation of the then Deputy Registrar without adopting any due process of selection. Consequently, on coming to know of the same, the University on 10.07.2001 cancelled the said promotion. Similarly the respondents in their counter affidavit filed in Writ Petition No. 7216 (S/S) of 2001 have stated that the petitioner Rajendra Singh Kaintura was working in the University as a Data Entry Operator. He applied for the vacant post of Computer Operator for which he did not hold the requisite qualification. This post was subject to the advertisement and can only be filled up by direct recruitment through selection process and not by promotion, but the petitioner on the

recommendation of Deputy Registrar obtained the appointment order from the Vice Chancellor in violation of Rules. Other candidates were by-passed who also applied for the said post. Learned counsel for the respondents submitted that the petitioner did not possess the requisite qualification for the appointment on the said post. Consequently, the initial appointment of the petitioner was cancelled after due opportunity of hearing to the petitioner on 10.07.2001 and a detailed order was passed on 17.07.2001 in this respect.

The petitioner Bharat Singh Rana is Writ Petition No. 7213 (S/S) of 2001 has assailed the impugned orders on the ground that the same have been passed without giving any opportunity of hearing to the petitioner; that the Registrar has no authority to terminate the services of any employee appointed by the Vice Chancellor without seeking prior approval or permission; that the petitioner has been appointed through proper advertisement followed by due process of selection and there was no illegality in appointment of the petitioner; that the Registrar has no power to review his own orders or to exercise power of review unless such an exercise is supported by specific legal authority and lastly that the act of the respondent is wholly arbitrary, illegal and without jurisdiction.

The petitioner Rajendra Singh Kaintura in writ petition no. 7216 (S/S) of 2001 has assailed the impugned orders on the ground that the respondents have made appointment on the post of Computer Operator on the basis of past experience of the employees and those employees are still continuing; that promotion of petitioner dated 22.06.2001 on the post of Computer Operator was made by the orders of Vice Chancellor himself and the same was communicated by the Asstt. Registrar (Admin.), therefore it is wrong to say that the appointment was illegal; that on the one hand merely on the

basis of 5 years' experience of Key Punch Operator that too on ad-hoc basis, one Smt. Roshini Chauhan has been given permanent promotion on the post of Computer Operator whereas the petitioner who was appointed as Key Punch Operator in the year 1993 and at the time of his promotion dated 22.06.2001 he had 8 years' experience in his credit, his promotion has been cancelled on the ground that he does not possess requisite qualification; that the Registrar has no power to cancel the order of Vice Chancellor, therefore, the impugned order is without jurisdiction; that the persons working in the Computer Centre as Technical Assistant are not even eligible as Technician for lack of requisite qualification (B.Sc. Science) and they have been promoted as Computer Operator giving seniority over petitioner who works in Computer Centre whereas Computer Centre and Computer Department are separate and different Departments and one of those who has been given such appointment/promotion is Yudh Veer Singh Bhandari who has been promoted from Technical Assistant to Computer Operator prior to the promotion of petitioner.

The sole ground on which the impugned order dted 10.07.2001 is passed is that no approval was acquired from the Registrar while making appointment of the petitioners nor this fact was brought to the notice of Registrar. The petitioner Bharat Singh Rana has filed a supplementary affidavit on 4th April, 2007, wherein he has annexed a letter of the Registrar, H.N.B. Garhwal University, Sri Nagar dated 20.12.2006. The aforesaid letter is in reply of the information sought by the petitioner under the Right to Information Act, wherein it is specifically stated that the fact was brought to the knowledge of the Registrar, and in fact, he has proposed a proposal for the aforesaid appointment of the petitioner. The relevant answer supplied by the Registrar by the aforesaid letter is as under:-

1. श्री भरत सिंह को कैटलागर के पद पर नियुक्ति प्रकरण तत्कालीन कुलसचिव के संज्ञान में लाया गया था।

2- श्री भरत सिंह की नियुक्ति की स्वीकृति का प्रस्ताव तत्कालीन कुलसचिव द्वारा किया गया था।

Thus, from the information supplied by the Registrar of the University itself, it is clear that the order impugned dated 10.07.2001 is contrary to the contents of letter dated 20.12.2006. Further once the petitioners were provided regular appointment on the post, the appointment/ promotion of the petitioners could not have been terminated without giving opportunity of hearing to the petitioners. There is no whisper in the counter affidavit that the petitioners were afforded opportunity of hearing prior to passing of the impugned orders.

In view of the aforesaid circumstances, the orders passed by the Registrar dated 10.07.2001 and 08.11.2001 are hereby quashed. Writ petitions are allowed. No order as to costs.

(M.M. Ghildiyal, J.)

October 12,2007
VKS